

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

JUDITH LANDA,

Index No.:

Plaintiff,

- against -

**SUMMONS**

MARK POLONCARZ, Erie County Executive,

Defendant.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the verified complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York) or within (60) days after service of this summons if it is the United States of America; and in case of your failure to appear or

answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
November 15, 2019

ZEICHNER ELLMAN & KRAUSE LLP

By:

J. David Morrissey  
Attorneys for Plaintiff

Judith Landa

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

JUDITH LANDA,

Plaintiff,

- against -

MARK POLONCARZ, Erie County Executive,

Defendant.

Index No.:

**VERIFIED COMPLAINT**

Plaintiff Judith Landa (“Mrs. Landa”), by her attorneys, Zeichner Ellman & Krause LLP, for her complaint, alleges the following upon information and belief.

**NATURE OF THE ACTION**

1. While acting in his capacity as County Executive for the County of Erie, New York, Mark Poloncarz (“Defendant”) repeatedly and maliciously defamed Mrs. Landa, causing her economic and reputational harm.

2. Defendant’s defamatory campaign against Mrs. Landa included maliciously making demonstrably false allegations about her during a televised press conference and in local news interviews he orchestrated for the sole purpose of defaming and damaging Mrs. Landa.

3. Defendant further disseminated his defamatory statements online through postings of those statements to YouTube and his publication of additional false and damaging allegations about Mrs. Landa via his Twitter account.

4. Defendant's defamation of Mrs. Landa remains accessible online to date, and therefore continues to damage her reputation and business interests.

### THE PARTIES

5. Mrs. Landa is a resident of Nassau County, New York and a family and community focused grandmother. She is also an investor in nursing home facilities, and all of those facilities that she has an interest in are fully compliant with state and federal agency regulations.

6. Defendant is and was the Erie County Executive at all relevant times to this action, and he held such position when he began his defamatory campaign against Mrs. Landa, which spanned over a year.

### JURISDICTION AND VENUE

7. This court has jurisdiction pursuant to CPLR § 301 and venue is proper pursuant to CPLR § 503.

### RELEVANT FACTS

8. Emerald North Rehabilitation and Care Center and Emerald South Rehabilitation and Care Center (referred to herein as "Emerald North" and "Emerald South," respectively, and collectively as the "Facilities") were previously owned and managed by Presbyterian Senior Care of WNY Inc. ("Presbyterian") and known as Harbour and Hawthorn Multicare Centers for Living.

9. Emerald North includes 95 skilled nursing and sub-acute beds and Emerald South consisted of 122 beds and a dementia unit.

10. The Facilities accepted some of the most challenging and high-risk patients that many other nursing homes declined to treat.

11. Presbyterian was unable to profitably operate the Facilities and therefore placed them into voluntary receivership in July 2012.

12. Thereafter, in 2013, both Facilities were purchased by a private partnership.

13. The purchasing partnership consisted of two partners: Mrs. Landa (a passive investor in nursing home facilities) and Barry Jerimias, a known operator of nursing homes.

14. As a passive investor, Mrs. Landa ceded control of the Facilities to Mr. Jerimias, who oversaw the day to day operations of the Facilities.

15. Within the first year of the purchase of Emerald North and Emerald South, Mr. Jerimias abandoned the partnership, leaving Mrs. Landa, a passive investor, with the responsibility of managing the Facilities.

16. In an effort to ensure that the patients at the Facilities received the best possible care, and with the permission of the New York State Health Department, Mrs. Landa hired Sapphire Care Group, a nursing home management company to manage the day to day operations of the Facilities.

17. Mrs. Landa's singular focus for the Facilities, which were failing before she became involved with them, was to improve their operations.

18. In furtherance of her efforts to transform the Facilities into a successful enterprise, Mrs. Landa never accepted any monetary benefit for her involvement with, or ownership of, the Facilities.

19. Unlike the previous owner, which paid fees to its parent company during its operation of the Facilities, Mrs. Landa reinvested all proceeds from the operation of the Facilities back into their operation.

20. Indeed, during her ownership of Emerald North and Emerald South, Mrs. Landa never profited, gained, or otherwise took any money from or out of Facilities. To the contrary, Mrs. Landa invested several million dollars into the Facilities.

21. Similarly, Mrs. Landa's husband (the owner of the real estate on which the Facilities are located) did not seek rent from Emerald North or Emerald South.

22. Instead, Mrs. Landa reinvested what would otherwise have been paid in rent back into the operation of Facilities.

23. Additionally, in an effort to positively transform Emerald North and Emerald South, Mrs. Landa and her husband separately invested or forewent the collection of a total of approximately \$10 million into the Facilities that they will never recoup.

24. Despite Mrs. Landa's expenditures and best efforts, she concluded that Emerald North and Emerald South were so burdened with insurmountable issues predating her ownership that she would be unable to create the positive change necessary to make the ailing Facilities sustainable.

25. Mrs. Landa then marketed the Facilities for sale and voluntarily sought, through her attorney, for a receiver to be appointed to run the Facilities until she could divest herself of her ownership interest in them.

26. After learning that Mrs. Landa's negotiations to sell Emerald North and Emerald South to a specific buyer were maturing, Defendant began making false and damaging public statements about Mrs. Landa and her involvement with the Facilities.

27. Defendant, as County Executive, had the resources at his disposal to easily educate himself regarding the ownership and operation of Emerald North and Emerald South.

28. Instead of doing so, however, he maliciously and publicly defamed Mrs. Landa with the sole purpose of damaging her and interfering with the impending sale of the Facilities – potentially with discriminatory motivation.

29. He made his defamatory statements with knowledge of their falsity, with serious doubts relating to their veracity, or with reckless disregard for their falsity.

30. Motivated by spite, and ill will toward Mrs. Landa, Defendant repeatedly made false and damaging statements about Mrs. Landa to the New York State Department of Health and arranged for his false and damaging comments about her to be

disseminated to as many people as he could by orchestrating a press conference on August 23, 2018 at the Facilities, to which he invited the local press.

31. At that press conference, and in news interviews he gave before and after it, the Defendant – a publicly elected official charged with serving his community – made several demonstrably false statements intended to cause, and actually causing, damage to Mrs. Landa.

32. Defendant made all of his statements after refusing to meet with Mrs. Landa's team to educate himself relating to the falsity of his statements.

33. Among other defamatory statements, Defendant stated that Mr. and Mrs. Landa "are deadbeat downstate owners who neither care about the patients and residents nor the employees at the facility."

34. Defendant went on to falsely state that the Facilities were "owned by wealthy and powerful people downstate who don't give a damn about the people of Erie county," referring to Mr. and Mrs. Landa.

35. Beyond the immediately apparent nature of that comment, Defendant clearly implied by it that Mrs. Landa allowed Mr. Landa to impermissibly participate in the management of Emerald North and Emerald South – which he would have been prohibited from doing by law as the owner of the real estate where the Facilities were situated.

36. Defendant's false statements regarding Mr. and Mrs. Landa's "ownership" of the Facilities were coupled with several demonstrably false and

damaging allegations about the Facilities that Defendant explicitly linked to such “ownership,” which harmed Mrs. Landa’s reputation and caused her monetary damage.

37. For example, during his press conference, Defendant stated that the Facilities’ “owners are treating residents horribly, they have been treating employees recently very horribly and now they’ve put the public at risk.”

38. Defendant clearly communicated to his audience that he was referencing Mrs. and Mr. Landa by his statements, despite the fact that he knew Mr. Landa had no part in the operation of the Facilities (As set forth above, Mr. Landa was prohibited from participation in the operation of the Facilities by New York Department of Health regulations based on his ownership of the underlying real estate.)

39. Defendant also falsely stated that there was “no running water” at the Facilities and therefore the facility’s laundry was being taken to public laundromats to be washed, which “put the public and patients at risk.”

40. Defendant went on to falsely state that residents and employees of the facility did not have phones that could call 911.

41. He also made the false statement that Mrs. Landa, as an owner of the Facilities, was “putting the public at risk” due to her “failure to follow appropriate health laws.”

42. Defendant went on to falsely state that “[t]he Department of Health has to act. They have to put it [the Facilities] in receivership. They’re the only

ones who can. Erie County can't. If we could, I would've signed an executive order this morning to do so."

43. Additionally, Defendant falsely stated that employees at the Facilities "had payroll checks bouncing, failure to account for payroll deductions and deposits into a pension fund and workers' training fund."

44. The inference Defendant (sometimes explicitly) drew was that Mrs. Landa was the root cause of each of his demonstrably false allegations, which he made maliciously with at least a reckless disregard of their falsity.

45. Defendant, without basis, went so far as to call for criminal charges to be filed against Mr. and Mrs. Landa.

46. Earlier on the day of press conference, Defendant set the stage for his attack on Mrs. Landa by commencing his defamatory campaign against her via his twitter account, which he appears to have used exclusively (or almost exclusively) as a means to communicate to the public as the Erie County Executive.

47. First, he attempted to drum up interest in and attendance at his staged press conference by tweeting "At 10 am I will join @ECSeniorSvcs Commissioner Tim Hogues and others in front of the Emerald South Nursing Facility on Delaware Avenue to voice our concerns about the facility and call on @HealthNYGov and others to take action against the downstate owners for their actions," falsely referencing both Mrs. And Mrs. Landa as the "owners" of Emerald

South and implying that Mrs. Landa had taken “actions” that necessitated governmental intervention.

48. He went on to tweet that “There are many more problems with the Emerald South Nursing Facility than publicly known. In just a few minutes I will detail those issues and then call on @HealthNYGov to take specific action to protect the residents, employees and general public,” explicitly implying the existence of “facts” that justified his statements but were unknown to his audience (the general public).

49. Defendant continued his Twitter rant on August 23, 2018 by tweeting “The public and the residents of Emerald South deserve responsible ownership, not deadbeat downstate owners who have willfully neglected this facility” unequivocally and erroneously referring to Mrs. Landa, a partner in the ownership of the Facilities.

50. Pouring on the defamatory publication, Defendant also tweeted that “The Emerald South Nursing Facility is a danger to its residents, employees and now the public. @HealthNYGov must immediately put the facility into receivership and force the sale of it from the downstate, deadbeat owners,” again falsely referring to Mrs. Landa as a “deadbeat” who created a public “danger.”

51. After his earlier tweeting and the press conference that he staged to maliciously disseminate his defamatory statements, Defendant followed up by falsely tweeting “News to report on the Emerald South Nursing Facility: as we were leaving the scene what appeared to be 3 @HealthNYGov inspectors wearing badges walked into the facility. The NYS Health Dept. must place this facility into receivership to

protect the residents, employees & public" and that "Emerald South is dangerously understaffed, proper health protocols are not being followed, and employees check's [sic.] are bouncing. Soiled medical linens are being taken to public laundromats to be washed."

52. Finally, on August 23, 2018, Defendant tweeted that he "called on @HealthNYGov to place the Emerald South Nursing Facility in receivership" and that Mrs. Landa "has shown a willful indifference to the safety of the residents, employees and now the public."

53. Thereafter, on September 2, 2018, Defendant maliciously referenced Mrs. Landa in another tweet when he published the false statement that "The editorial board of @TheBuffaloNews agrees with me that @HealthNYGov must appoint a receiver to run the troubled Emerald South Nursing Home. The residents deserve to be treated well, not just a cash cow for the downstate owners" and in yet another tweet Defendant referenced Mrs. Landa as an "absentee downstate owner."

54. Based upon Defendant's defamatory campaign against Mrs. Landa, and the media coverage of it that Defendant orchestrated, Mrs. Landa's ability to sell the Facilities was greatly injured, and the previously negotiated agreement to sell the Facilities was never executed.

55. Mrs. Landa was damaged when she was forced to attempt to sell the Facilities for markedly less than the contract price she had previously negotiated.

56. Later, on October 26, 2018, in an apparent ploy seeking political gain, Defendant dishonestly took credit for Mrs. Landa's voluntary request to the New York State Department of Health that a receiver be appointed to manage the operations Facilities.

57. He tweeted "Thank you to @HealthNYGov for taking serious my request to appoint a receiver for the Emerald South facility. I met with new operator Jeremy Strauss and his team yesterday. He pledged to make changes immediately to the facility. This is a good result."

58. While Mrs. Landa made such request for the benefit of the Facilities' residents and to mitigate the financial burden on her from personally propping up the finances of the Facilities, Defendant falsely publicized the event as a result of his actions in furtherance of his own political agenda.

59. Defendant at all times had resources available to him that would allow him to easily determine the falsity of the defamatory statements he made.

60. He had also declined the opportunity to meet with Mrs. Landa's team to discuss the state of the Facilities and the ownership and management thereof.

61. Instead, he willfully failed to utilize his resources before he made his comments.

62. Further, Mr. and Mrs. Landa even offered to meet with Defendant to discuss his defamatory statements after he made them, and to educate Defendant on how his statements were not factually accurate.

63. Defendant refused that opportunity as well.

64. Alternatively, he doubled down on his defamatory campaign – presumably because he saw political gain to be had from continuing to advance his narrative, although he knew it to be false, had a reasonable belief that it may be false, or was recklessly disregarding its falsity.

65. Based on the foregoing, Mrs. Landa timely served a Notice of Claim on Defendant, the Erie County Executive, via the Erie County Department of Law on November 20, 2018.

66. Again, instead of pursuing the truth, or an amicable resolution to the issue he had created with his statements, Defendant went on the offensive again.

67. On December 31, 2018, Defendant continued his defamatory campaign against Mrs. Landa when he again disingenuously used Emerald South as a vehicle for his own political gain, and falsely alleged that he had been “threatened” relating to it.

68. He tweeted “As I did when calling for the Emerald South Nursing Home to be placed into receivership in August, I will always fight for the best interest of our residents and will never be silenced by the threats of others. I will always fight for you!”

69. Months later, after being educated about his defamatory statements following the service of the Notice of Claim, Defendant slyly created a video wherein he again disingenuously took credit for the closing of Emerald South – which

was closed voluntarily by the receiver appointed at Mrs. Landa's request, but this time used a private citizen to make all of his false factual allegations against Mrs. Landa for him (in the video, Defendant defers to the individual appearing with him each time a false factual assertion is to be made).

70. Defendant then tweeted the video, along with another tweet attempting to harness political gain from the video, again taking credit for closing Emerald South because it "had become a danger to its residents."

71. Each of Defendant's referenced publicly made statements and published statements were false.

72. Each of such statements were made with malice.

73. Those statements greatly damaged Mrs. Landa in several ways.

74. Mrs. Landa suffered monetary damage by the reduction in the purchase price of her stake in the facilities and the delay in the sale of the facilities based upon Defendant's defamatory publications.

75. Additionally, Mrs. Landa was damaged in her profession/trade by Defendant's (an elected official) many defamatory comments about her participation, or lack thereof, in the management of the facilities.

76. Finally, Mrs. Landa's reputation was damaged in her own community because of Defendant's defamatory statements.

77. Because of Defendant's malice, Mrs. Landa was exposed to contempt, ridicule, aversion, and disgrace that she would have otherwise not been subjected to.

**FIRST CAUSE OF ACTION**  
**(Slander)**

78. Mrs. Landa repeats and realleges the allegations contained in paragraphs 1 through 77.

79. As set forth herein, while engaged in his position as Erie County Executive, Defendant made several false statements.

80. It was apparent on the face of those statements that those who heard them would understand them to be regarding Mrs. Landa.

81. They were meant to convey, among other things, that Mrs. Landa was untrustworthy, incapable, acted improperly, was siphoning funds away from a nursing home for her benefit and to its detriment, and by her actions and inactions was endangering patients, employees, and the public.

82. Defendant made the statements with knowledge of their falsity, with doubts relating to their veracity, or with reckless disregard for their falsity.

83. All the referenced statements were, in fact, false.

84. As a result of Defendant's malicious statements about her, Mrs. Landa suffered monetary loss, damage to her in her trade/profession, and reputational harm as set forth herein.

85. Therefore, the statements that Defendant made about Mrs. Landa constitute defamation.

86. As such, Mrs. Landa is entitled to recover special (compensatory) damages and punitive damages from Defendant in an amount to be determined at trial but no less than the jurisdictional limit of the Court.

**SECOND CAUSE OF ACTION**  
**(Slander *Per Se*)**

87. Mrs. Landa repeats and realleges the allegations contained in paragraphs 1 through 86.

88. As set forth herein, while engaged in his position as Erie County Executive, Defendant made several false statements.

89. It was apparent on the face of those statements that those who heard them would understand them to be regarding Mrs. Landa.

90. They were meant to convey, among other things, that Mrs. Landa was untrustworthy, incapable, acted improperly, was siphoning funds away from a nursing home for her benefit and to its detriment, and by her actions and inactions was endangering patients, employees and the public.

91. Defendant's statements were designed to, and did in fact, injure Mrs. Landa in her trade/profession, and in some cases imputed the commission of a crime onto her.

92. Defendant made the statements with knowledge of their falsity, with doubts relating to their veracity, or with reckless disregard for their falsity.

93. All the referenced statements were, in fact, false.

94. Therefore, the statements that Defendant made about Mrs. Landa constitute defamation *per se*.

95. As a result of Defendant's malicious statements about her, Mrs. Landa suffered monetary loss, damage to her in her trade/profession, and reputational harm as set forth herein.

96. As such, Mrs. Landa is entitled to recover special (compensatory) damages, presumed damages, and punitive damages from Defendant in an amount to be determined at trial but no less than the jurisdictional limit of the Court.

**THIRD CAUSE OF ACTION**  
**(Libel)**

97. Mrs. Landa repeats and realleges the allegations contained in paragraphs 1 through 96.

98. As set forth herein, while engaged in his position as Erie County Executive, Defendant published several false statements via his Twitter account.

99. It was apparent on the face of those statements that those who read them would understand them to be regarding Mrs. Landa.

100. They were meant to convey, among other things, that Mrs. Landa was untrustworthy, incapable, acted improperly, was syphoning funds away from a

nursing home for her benefit and to its detriment, and by her actions and inactions was endangering patients, employees and the public.

101. Defendant made the statements with knowledge of their falsity, with serious doubts relating to their veracity, or with reckless disregard for their falsity.

102. All the referenced statements were, in fact, false.

103. As a result of Defendant's malicious statements about her, Mrs. Landa suffered monetary loss, damage to her in her trade/profession, and reputational harm as set forth herein.

104. Therefore, the statements that Defendant made about Mrs. Landa constitute defamation.

105. As such, Mrs. Landa is entitled to recover special (compensatory) damages and punitive damages from Defendant in an amount to be determined at trial but no less than the jurisdictional limit of the Court.

#### **FOURTH CAUSE OF ACTION** ***(Libel Per Se)***

106. Mrs. Landa repeats and realleges the allegations contained in paragraphs 1 through 105.

107. As set forth herein, while engaged in his position as Erie County Executive, Defendant published several false statements via his Twitter account.

108. It was apparent on the face of those statements that those who read them would understand them to be regarding Mrs. Landa.

109. They were meant to convey, among other things, that Mrs. Landa was untrustworthy, incapable, acted improperly, was syphoning funds away from a nursing home for her benefit and to its detriment, and by her actions and inactions was endangering patients, employees and the public.

110. Defendant's statements were designed to, and did in fact, injure Mrs. Landa in her trade/profession, and in some cases imputed the commission of a crime onto her.

111. Defendant made the statements with knowledge of their falsity, with serious doubts relating to their veracity, or with reckless disregard for their falsity.

112. All the referenced statements were, in fact, false.

113. Therefore, the statements that Defendant made about Mrs. Landa constitute defamation *per se*.

114. As a result of Defendant's malicious statements about her, Mrs. Landa suffered monetary loss, damage to her in her trade/profession, and reputational harm as set forth herein.

115. As such, Mrs. Landa is entitled to recover special (compensatory) damages, presumed damages, and punitive damages from Defendant in an amount to be determined at trial but no less than the jurisdictional limit of the Court.

**FIFTH CAUSE OF ACTION**  
**(Tortious Interference with Business Relations)**

116. Mrs. Landa repeats and realleges the allegations contained in paragraphs 1 through 115.

117. At the time of Defendant's statements, Mrs. Landa was engaged in discussions regarding finalizing a prior agreement in principal to sell the Facilities.

118. Defendant had actual knowledge that such a business relationship existed before he made his statements.

119. By his statements, Defendant intentionally attempted to influence the referenced prospective agreement to Mrs. Landa's detriment.

120. Defendant's defamatory comments about Mrs. Landa and her business caused the prospective purchaser of the Facilities to change his mind and not proceed with his contemplated purchase of the Facilities.

121. But for Defendant's statements, the original contemplated deal to sell the Facilities would have closed.

122. Therefore, Mrs. Landa was damaged in the amount of the difference between the value of the contemplated deal prior to Defendant's defamatory statements and the value of the deal for Mrs. Landa's sale of Emerald North and Emerald South that ultimately closed.

123. As such Mrs. Landa is entitled to recover from Defendant in the amount of that price reduction.

**SIXTH CAUSE OF ACTION**  
**(Permanent Injunction)**

124. Mrs. Landa repeats and realleges the allegations contained in paragraphs 1 through 123.

125. Defendant has continued to engage in a defamatory campaign against Mrs. Landa, even after she has ceased all involvement with Emerald North and Emerald South, seemingly for personal or political gain, and potentially motivated by prejudice.

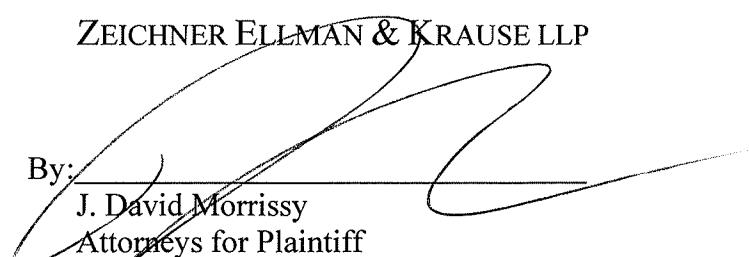
126. Therefore, Defendant should be enjoined from making further defamatory statements about Mrs. Landa or relating to the Emerald North or Emerald South facilities.

WHEREFORE, Judith Landa respectfully demands judgment against Defendant as follows:

- (a) On the FIRST CAUSE OF ACTION, a money judgment in an amount to be determined after trial, but in no event less than the jurisdictional limit of the Court, together with interest thereon;
- (b) On the SECOND CAUSE OF ACTION, a money judgment in an amount to be determined after trial, but in no event less than the jurisdictional limit of the Court, together with interest thereon;
- (c) On the THIRD CAUSE OF ACTION, a money judgment in an amount to be determined after trial, but in no event less than the jurisdictional limit of the Court, together with interest thereon;

- (d) On the FOURTH CAUSE OF ACTION, a money judgment in an amount to be determined after trial, but in no event less than the jurisdictional limit of the Court, together with interest thereon;
- (e) On the FIFTH CAUSE OF ACTION, a money judgment in an amount to be determined after trial, but in no event less than the jurisdictional limit of the Court, together with interest thereon;
- (f) On the SIXTH CAUSE OF ACTION, an order permanently enjoining Defendant from making any further defamatory statements about Mrs. Landa or the Facilities;
- (g) Punitive damages against Defendant for his malicious defamation of Mrs. Landa sufficient to punish Defendant for his conduct and deter the type of conduct complained of herein;
- (h) Attorneys fees and the costs of this action;
- (i) Such other and further relief as this Court deems just and proper.

Dated: New York, New York  
November 14, 2019

ZEICHNER ELLMAN & KRAUSE LLP  
  
By: J. David Morrissey  
Attorneys for Plaintiff  
Judith Landa  
1211 Avenue of the Americas  
New York, New York 10036  
(212) 223-0400

**VERIFICATION**

STATE OF NEW YORK,  
COUNTY OF NASSAU.

Judith Landa, being duly sworn, says that she is the named plaintiff in the foregoing complaint; that Zeichner Ellman & Krause LLP is authorized to represent plaintiff in this action; that she has read the foregoing complaint and that the complaint is true to her own knowledge except as to those matters therein stated to be alleged upon information and belief, and that as to those matters, she believes them to be true.

*Judith Landa*  
\_\_\_\_\_  
JUDITH LANDA

Sworn to before me this  
4th day of November 2019

\_\_\_\_\_  
Notary Public

*Katrinna Q. Lampitoc*  
KATRINNA Q. LAMPITOC  
Notary Public, State of New York  
Reg. No. 01LA6264532  
Qualified in Nassau County  
Commission Expires July 02, 2020

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

Index No.:

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JUDITH LANDA,

Plaintiff,

- against -

MARK POLONCARZ, Erie County Executive,

Defendant

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**SUMMONS AND VERIFIED COMPLAINT**

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